

IN THE SUPREME COURT

STATE OF ARIZONA

In the Matter of:)	
)	
PETITION TO AMEND PROPOSED)	Supreme Court No. R-08-_____
RULE 41, RULE 47.1, RULE 50,)	(Emergency or Expedited
RULE 56, RULE 58, RULE 60, RULE 61,)	Adoption Requested)
RULE 63 AND RULE 79;)	
AND)	
PETITION TO ADOPT PROPOSED)	
RULE 61.1 AND 62.1.)	
_____)	

Pursuant to Arizona Supreme Court Rule 28, David K. Byers, Director, Administrative Office of the Courts, respectfully petitions this Court to adopt the attached proposed rule amendments and new rules to the Rules of Procedure for the Juvenile Court.

I. Background and Purpose of the Proposed Rule Amendments and New Rules

In the Second Regular Session of the Forty-eighth Legislature (2008), the Legislature passed Senate Bills 1441 and 1442 as well as House Bills 2453 and 2764. These statutes have an impact upon the Rules of Procedure for the Juvenile Court, Part III. Dependency, Guardianship and Termination of Parental Rights. The Senate Bills were signed by the governor on May 12, 2008. The House bills were signed by the governor on June 24, 2008 and May 7, 2008 respectively. All have an effective date of September 26, 2008.

Senate Bill 1441 (Chapter 198) expedites permanency for children less than three years of age who have been removed from their homes. Senate Bill 1442 (Chapter 199) requires the court, at a preliminary protective hearing, to inform a foster parent, pre-adoptive parent or a member of the child's extended family with whom the department has placed the child of the

right to be heard in any proceeding to be held with respect to the child. The statute also extends this requirement to a relative identified as a possible placement for the child.

House Bill 2453 (Chapter 278) mandates that court proceedings regarding dependent children, permanent guardianship, and termination of parental rights be open to the public. A court may close a hearing for good cause shown. House Bill 2764 (Chapter 168) establishes procedures for a court to appoint a successor permanent guardian when the current permanent guardian is unable or unwilling to continue to serve as a permanent guardian.

II. Contents of the Proposed Rule Amendments and New Rules

The proposed new rules include provisions concerning open court proceedings, and notice requirements. For children under three there are: (1) expedited adoption hearings, (2) new grounds for termination of parental rights (3) new judicial determinations , (4) additional considerations at the first periodic review hearing and (5) limits on the time the court continues the permanency hearing beyond six months after the child who is under three years of age is removed from the child's home. Additionally, new rules are recommended to address a new category of guardian i.e. successor permanent guardian.

RULE 41

The proposed amendments to this rule provide for open court proceedings relating to dependent children, permanent guardianships and termination of parental rights. The proposed amendments also provide for the hearings to be closed for good cause and admonitions to be given to attendees.

RULE 47.1

There are six provisions outlined in A.R.S. §8-829 (Judicial determinations; timing;

documentation), of which only three are currently in Rule. The proposed changes include all six provisions, including the new change to A.R.S. §8-829, which is F. (B and D were already in statute, but are not currently in the rule).

RULE 50

The proposed changes provide for notice to a foster parent, pre-adoptive parent or a member of the child's extended family with whom the department has placed the child of the right to be heard in any proceeding to be held with respect to the child. Such notice is provided to a relative identified as a possible placement for the child as well. The proposed changes also include an admonition that "substantially neglecting or willfully refusing to remedy the circumstances that cause the child to be in an out-of-home placement, including refusing to participate in reunification services, is grounds for termination of parental rights to a child."

RULE 56

The proposed rule allows for notice of the right to participate in periodic review hearings to be given before the hearing.

RULE 58

The proposed rule includes notice to certain persons and entities of the right to participate in the proceeding and any future proceeding. The proposed rule also provides for notice about the sibling information exchange program, when the court finds that a child is no longer dependent or dismisses the proceeding. The provisions outlined in Rule 58(B) were already in statute but not in the rules even though they provide notification of proceedings and right to be heard which are clearly procedural matters.

RULE 60

The proposed rule includes a provision that the permanency hearing shall be held within six months of the removal of a child under three years from the child's home.

RULES 61, 61.1, AND 62.1, AND 63

The proposed rules provide for procedures relating to Successor Permanent Guardianships, as well as a conforming change to require appointment of a person nominated as guardian by a child twelve (12) years of age or older, unless the court finds it would not be in the child's best interest to do so.

RULE 79

The proposed amendment provides for time limits for hearings on adoption petitions. The time limits were not previously in rule, thus the proposed amendment adds time limits presently in statute and includes new time limits for children under three years of age.

III. Pre-Petition Distribution and Comment

The proposed rule changes were first circulated electronically to Judges Robert Brutinel, Eileen Willett and Patricia Escher. Judge Escher commented and her comments were incorporated. The petition was then circulated to members of the Committee on Juvenile Courts (COJC). Comments were received from Judge Escher, David Miller and Judge John Nelson. The changes recommended by Judge Escher and David Miller were incorporated. Judge Nelson's comments will be provided to the court in a separate memorandum. AOC staff also met and consulted with staff from the Department of Economic Security and the Attorney General's Office on July 11, 2008. Draft rules were circulated to these representatives as well. No comments were received.

IV. Effective Date of the Proposed new Rule

Petitioner respectfully requests that the proposed new rules be adopted on an expedited basis pursuant to Rule 28(G) effective on and after September 26, 2008, as that is the effective date of the statutory changes necessitating the rule changes, with distribution for comment following adoption. The proposed rule amendments and rules are attached as Appendix A.

RESPECTFULLY SUBMITTED this 1st day of August, 2008:

By _____
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APPENDIX “A”